

/STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL DISTRICT
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,
OFFICE OF FINANCIAL AND INSURANCE SERVICES
FOR THE STATE OF MICHIGAN,

Petitioner,

Case No. 03-1127-CR

v

Hon. William E. Collette

THE WELLNESS PLAN,
a Michigan Health Maintenance Organization,

Respondent.

At a session of said Court
held in the City of Mason, Michigan
on the 21st day of July, 2004.

PRESENT: HON. WILLIAM E. COLLETTE
CIRCUIT JUDGE

**ORDER APPROVING THE REHABILITATOR'S PLAN TO SELL ASSETS OF THE
RIGHT TO SERVE THE MEMBERS OF THE WELLNESS PLAN**

This matter is before the Court on the Petition of Linda A. Watters, Rehabilitator of The Wellness Plan, seeking approval to sell the right to serve the Medicaid members of The Wellness Plan. The Deputy Rehabilitator served the petition and the June 18, 2004 scheduling order as provided in that order. The Court received Objections from five persons, one of whom, Gambro Healthcare, Inc., subsequently withdrew its objection. The Rehabilitator, Molina Healthcare of Michigan, Inc., and McLaren Health Plan, Inc. all filed responses to the objections. On July 21, 2004, the Court heard argument by counsel for and against the proposed sale. After fully considering the matter the Court finds that:

FINDINGS

A. This matter is before the Court on the Rehabilitator's Petition for Approval of the Rehabilitator's Plan to Sell the Right to Serve the Members of The Wellness Plan. The Wellness Plan was placed into Rehabilitation pursuant to Chapter 81 of the Insurance Code of 1956, MCL 500.8101 et seq., by order of this Court on July 1, 2003. Pursuant to MCL 500.8114 the Court appointed Linda A. Watters, the Commissioner of the Office of Financial Insurance Services, as the Rehabilitator. Under Chapter 81, legal title to all assets of the Wellness Plan is vested in the Rehabilitator. Further the Court has exclusive jurisdiction over claims of creditors, including providers, against The Wellness Plan.

B. The Court finds that the Rehabilitator has authority to sell the right to serve the members of The Wellness Plan in the manner described in the petition and the Rehabilitator's Response to the objections pursuant to Sections 8113 and 8114 of the Insurance Code of 1956, as amended, MCL 500.8113 and MCL 500.8114.

C. The Court finds that The Wellness Plan was not awarded a Medicaid contract effective October 1, 2004. The Court finds further that without a sale of the right to serve the members of The Wellness Plan to qualified, eligible bidders, The Wellness Plan would receive no compensation of this asset. If this were to occur, there may not be sufficient assets upon liquidation of the Wellness Plan to pay its claims. The Court further finds that time is of the essence in order to allow the Rehabilitator and the Buyers sufficient time to negotiate definitive purchase agreements, to notify the members of the purchase, to implement a smooth transition of members to the Buyers, and to obtain the necessary regulatory approvals.

D. The Court finds that the process undertaken by the Rehabilitator in soliciting offers for the right to serve The Wellness Plan's Medicaid members in the request for offer letter of

May 12, 2004, which process was approved and authorized by the Court by order dated May 11, 2004, was necessary, reasonable, fair and open. The Court further finds that the proposed sale of the right to serve the members of The Wellness Plan to the Buyers is an arms length transaction entered into in good faith by the Rehabilitator and the Buyers.

E. The Court finds that Molina Healthcare of Michigan, Inc., McLaren Health Plan, Inc., and Total Health Care, Inc. are qualified, eligible bidders under the terms of the May 12, 2004 request for offers. The Court further finds that Molina Healthcare of Michigan, Inc., McLaren Health Plan, Inc., and Total Health Care, Inc. were awarded Medicaid contracts by the Department of Management and Budget. Total Health Care, Inc. was awarded a contract to serve Medicaid eligible persons in Macomb, but not Oakland, County.

F. The Court finds the Rehabilitator's proposed sale of the right to serve the members of The Wellness Plan's assets to be fair and equitable, and in the best interest of the creditors, providers, and members of The Wellness Plan and the public as a whole.

G. The Court finds that this Order is necessary to adequately protect the State's legitimate interest in the regulation of the dissolution of The Wellness Plan, and for the protection of its providers, creditors, members, and the public as a whole.

ORDER

For the reasons stated herein, and on the record, **IT IS HEREBY ORDERED THAT:**

1. The Rehabilitator is authorized to sell the right to serve the Medicaid members of The Wellness Plan according to the terms outlined in the offers received from Molina Healthcare of Michigan, Inc., McLaren Health Plan, Inc., and Total Health Care, Inc. ("the Buyers") as follows:

a. right to serve the Oakland County members to Molina Healthcare of Michigan, Inc.

- b. right to serve the Macomb County members to Total Health Care, Inc.
- c. right to serve the Wayne County members to Molina Healthcare of Michigan, Inc.
- d. right to serve the Genesee/Lapeer County members to McLaren Health Plan, Inc.
- e. right to serve the Muskegon/Oceana County members to Molina Healthcare of Michigan, Inc.

The Rehabilitator is authorized, without further order of this Court, to (a) negotiate, execute and deliver definitive purchase agreements with the Buyers, (b) exercise reasonable prudence in modifying any nonmaterial terms and conditions of the offers in order to achieve consummation of the transaction generally described in the individual offers, the final form of such definitive purchase agreements to be deemed approved by this Court, (c) take all actions reasonably necessary to consummate the sale of the right to serve the Medicaid members, and (d) execute such assignments and other certificates, documents or agreements as may be reasonably necessary in connection with the contemplated transactions.

2. All liabilities and obligations that accrue before the effective date of the transfers, including, but not limited to, all liability for healthcare services and benefits to members transferred to the Buyers on the effective date of the transfers that have accrued and relate to dates prior to the effective date shall remain with The Wellness Plan and the receivership estate and shall be paid, discharged or otherwise resolved as part of this Court's receivership proceedings, and the Buyers shall have no liability of any kind for such liabilities and obligations. All liabilities and obligations that accrue on or after the effective date of the transfers for healthcare services and benefits to members transferred to the Buyers on the effective date of the transfers that have accrued and relate to dates on or after the effective date

shall be the responsibility of the respective Buyers, except as the Rehabilitator and the Buyers otherwise agree in accordance with state and federal law

3. The Wellness Plan's Medicaid Provider Agreements continue to be subject to this Court's July 1, 2003 Order of Rehabilitation and Injunctive Relief until further order of the Court.

4. The Court retains exclusive jurisdiction to resolve any matters in dispute as a result of this Order.

5. Except as otherwise provided in this Order, the objections to the Petition for Approval of the Rehabilitator's Plan to Sell the Right to Serve the Members of the Wellness Plan are dismissed with prejudice.

6. Except as otherwise provided in this order, this Court's July 1, 2003 Order of Rehabilitation and Injunctive Relief remains in full force and effect.

WILLIAM E. COLLETTE

HON. WILLIAM E. COLLETTE
CIRCUIT JUDGE